

MEMORANDUM OF UNDERSTANDING

Among

THE COMMONWEALTH OF MASSACHUSETTS' EXECUTIVE OFFICE OF
ADMINISTRATION AND FINANCE, INFORMATION TECHNOLOGY DIVISION (ITD),
THE MASSACHUSETTS EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES,
AND ITS CONSTITUENT AGENCIES, AND THE MASSACHUSETTS OFFICE ON
DISABILITY

Concerning

ITD's (1) Research regarding Adoption of the Federal "Section 508" Standard with Respect to the Executive Department's Acquisition of Information Technology, (2) Enforcement of its Current Web Accessibility Standards for Websites and Web-Based Applications, (3) Adoption of Standards Requiring Inclusion of Certain Contractual Provisions regarding Accessibility and Usability Testing and (4) Adoption of Standards Requiring Training of Developers in Accessible Design, and Provision of Such Training

Whereas the Commonwealth is obliged under Section 504 of the Federal Rehabilitation Act of 1973 and the Americans with Disabilities Act to communicate effectively with people with disabilities;

Whereas the federal agencies regulating compliance with these statutes have not promulgated standards addressing computer and other telecommunications based communication that apply to the states;

Whereas Federal agencies are required, under Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d, to acquire only electronic equipment and information technology that is accessible;

Whereas the Federal Telecommunication Act requires access to telephone and television based communication for people with disabilities, under 47 U.S.C. § 225 and 47 C.F.R. §§ 6 and 7;

Whereas the specific rules governing Federal agency acquisition of accessible technology are set forth in the Final Standard for Electronic and Information Technology Accessibility, 36 C.F.R. §1194, and the Final Federal Acquisition Rule for Implementing Section 508 of the Federal Rehabilitation Act, 48 CFR Parts 2, 7, 10, 11, 12, and 39;

Whereas the Commonwealth's agencies are not by law subject to Section 508 of the Rehabilitation Act of 1973;

Whereas, the parties wish to engage in a discovery process regarding the feasibility of

ITD adopting a standard requiring that the Commonwealth's Executive Department Agencies acquire electronic and information technology under the same rules as Federal agencies, so that when Executive Department agencies develop, procure, maintain, or use electronic and information technology, Executive Department current and prospective employees with disabilities have access to and use of information and data that is comparable to the access and use by Executive Department employees who are not individuals with disabilities, and, in addition, individuals with disabilities who are members of the public seeking information or services from an Executive Department agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities;

Whereas, ITD is statutorily charged with setting information technology standards for the Executive Department under Mass. Gen. L. ch. 7, section 4A(d);

Whereas MOD is statutorily charged with identifying, analyzing, evaluating and monitoring public policies, programs, services and regulations that affect or may affect persons with disabilities under Mass. Gen. L. ch. 6, section 187(a) and is the Americans with Disabilities Act coordinating agency for the Executive Branch under Administration and Finance Bulletin #7;

Whereas the Executive Office of Health and Human Services (EOHHS) and each of its constituent agencies: the Commission for the Blind, the Commission for the Deaf and Hard of Hearing, the Department of Mental Health, the Department of Mental Retardation, the Department of Public Health, the Department of Social Services, the Department of Transitional Assistance, the Department of Youth Services, the Division of Health Care Finance and Policy, Elder Affairs, the Massachusetts Rehabilitation Commission, MassHealth, the Soldiers' Home in Massachusetts (Chelsea), the Holyoke Soldiers' Home, the Office for Refugees and Immigrants, and Veterans' Services; are committed to providing access to persons with disabilities to their programs and services including information technology;

Whereas, Article CXIV of the Commonwealth's Constitution states: "No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the Commonwealth."

Whereas Executive Order 348 requires that all state agencies develop procedures for identifying electronic equipment and telecommunication access needs of present and potential employees and consumers and for providing electronic equipment and telecommunications access as needed; and that all purchasing divisions develop procurement policies and other related documents that incorporate language relating to bid selection criteria for blanket contracts that will provide for equal access electronic equipment and information technology by focusing on functional performance rather than specific brands or manufacturers;

Whereas the mutual goal of ITD, and EOHHS is ensuring that the electronic and

information technology acquired by the Commonwealth's Executive Department be accessible, to the degree possible;

Whereas ITD has already adopted accessibility standards for websites and web-based software applications known as the "Web Accessibility Standards", which meet or exceed the requirements of the Federal Section 508 rule applicable to Federal agencies;

Whereas neither ITD nor the Operational Services Division (OSD) has adopted standards for the inclusion in contracts pertaining to the acquisition of information technology solutions the requirement that such solutions be tested for accessibility prior to acceptance;

Whereas ITD has neither adopted standards pertaining to the use of accessible design in the development of information technology systems nor provided training in accessible design to developers employed by or contracted with by Executive Department;

Whereas EOHHS is committed to making its information technology systems, in particular the Virtual Gateway, accessible and useable for all users by requiring that software developed for EOHHS and its constituent agencies be compliant with the ITD Web Accessibility Standards, the Section 508 Guidelines, the applicable provisions of the World Wide Web Consortium (W3C) web content accessibility guidelines, and appropriate usability standards. To that end, EOHHS is committed to collaborating with ITD and MOD to identify and implement accessibility and usability standards consistent with this agreement.

Now, therefore, the undersigned representatives of ITD, MOD and EOHHS voluntarily enter into the following Memorandum of Understanding (MOU).

1. The goals of the Commonwealth's efforts in this area should be:
 - a. Accessibility and usability of technology, regardless of disability;
 - b. Maintenance of said technology; and
 - c. Transitions to new or upgraded computer or telecommunication-based technologies that are as seamless for people with disabilities as they are for people without disabilities.
2. The signatories recognize that the Federal 508 standard includes requirements that have improved the accessibility of information technology acquired by Federal agencies, and that some states have incorporated the Federal 508 standard in whole or in part in state laws, regulations and policies. The parties acknowledge that ITD's statutory authority for standard setting extends only to information technology, and that it therefore could not adopt a version of the Federal 508 standard that included any rules regarding equipment and facilities unrelated to information technology. Nonetheless, the signatories are committed to using ITD's authority to significantly improve the accessibility of

information technology acquired and used by the Executive Department. ITD is currently in the process of researching the cost and policy implications of ITD adopting for Executive Department agencies a standard similar to the Federal 508 standard's provisions regarding information technology. ITD will, in this process, elicit input from all state government stakeholders, including ITD's Executive Committee, the Executive Office for Administration and Finance's Fiscal Affairs Division, the Operational Services Division (OSD), the Executive Department Chief Information Officers (CIOs), the IT Advisory Board, the Information Technology Audit Group of the Office of the State Auditor, the Human Resources Division (HRD), Office of Diversity and Equal Opportunity (ODEO), the Commission Against Discrimination, the Secretary of the Commonwealth's Office and the Attorney General's Office. ITD will complete its research regarding ITD's adoption of a new accessibility standard within one year of the date on which this MOU is executed.

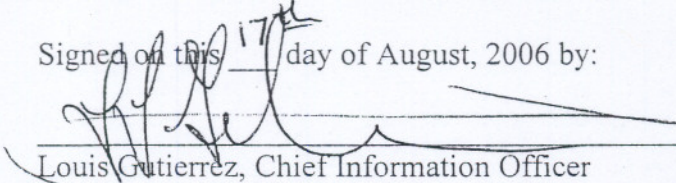
3. Regardless of whether ITD issues a Section 508-type standard in the future, ITD and MOD will work together to provide enterprise-wide support of accessibility efforts to increase awareness within the agencies so that ITD and MOD can effectively supervise compliance with existing ITD accessibility standards and achieve the highest possible degree of compliance with ITD accessibility standards in connection with the Executive Department's acquisition and use of information technology.
4. ITD will establish within ITD a unit devoted to accessible technology. The accessible technology unit will facilitate the following:
 - a. Provide notice to all agencies under ITD's policy making authority of the following activities. Enforcement of ITD's existing Web Accessibility Standard. ITD will commence enforcement of its existing Web Accessibility Standard within one month of the date on which this MOU is executed. ITD may rely on one or more of the following enforcement mechanisms: withholding future bond funding from agencies that fail to comply with the standard, instituting a compliance review during each IT bond-funded project, and automated or manual testing of each already implemented state agency website or web-based application for compliance with the standard.
 - b. Issuance of an ITD standard requiring that all contracts for information technology solutions (such as contracts entered under the current OSD enterprise contract RFR ITS23) entered by Executive Department agencies and solicited by them on or after December 1, 2006 include, at a minimum, standard language, developed by ITD, and MOD, in consultation with OSD, requiring that information technology solutions providers adhere to the information technology standards set forth in the Final Standard for Electronic and Information Technology Accessibility. Furthermore, such form language shall require that the information technology systems acquired by Executive Department agencies under contracts solicited by agencies on or after December 1, 2006 be tested at the vendor's

expense by third party accessibility and usability reviewers chosen from a statewide contract created by OSD in consultation with ITD and MOD, or by ITD pursuant to a delegation from OSD and in consultation with MOD. Such systems must be tested and, if found to be inaccessible, redesigned and retested until such testing demonstrates that the system is accessible pursuant to the Standard cited above, prior to being accepted by and paid for the acquiring agency. Nothing in this subsection 4d shall be interpreted to prohibit agencies from including in their contracts more stringent terms regarding accessibility and usability than those required by ITD.

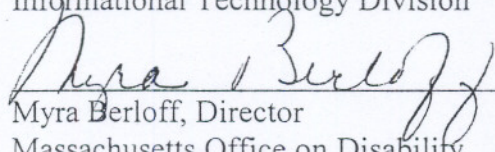
- c. Within two years of the date on which this MOU is executed, train all Executive Department developers and designers who are responsible for application user interfaces (including existing employees and new employees as they are hired) and all contract ("03") employee developers and designers in accessible design. Developers provided as resources by vendors must either take ITD's accessible design training or provide proof that they have been previously trained in such design methods. In addition, within the same timeframe, train all CIOs, and Webmasters about the requirements of this MOU, and notify agency heads regarding the same.
- d. Adoption of standards to be issued by ITD as an enterprise policy pertaining to the requirement that all individuals, including both employees and contractors, who provide information technology systems design to the Executive Department be trained in accessible design.
- e. Work with OSD to create a statewide contract for the acquisition of assistive technology so that state and municipal entities can realize the benefits of enterprise purchasing agreements to acquire such technology.

5. Nothing in this MOU is to be interpreted as an intent on the part of the parties that ITD revoke or amend its current Web Accessibility Standard.

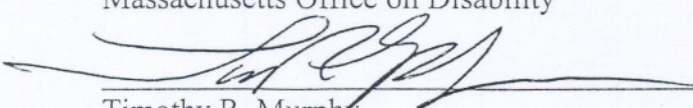
Signed on this 17th day of August, 2006 by:


 Louis Gutierrez, Chief Information Officer
 Informational Technology Division

8/17/06


 Myra Berloff, Director
 Massachusetts Office on Disability

8/17/06


 Timothy R. Murphy
 Secretary of Health and Human Services

8/17/06